



Auckland Council submission

Infrastructure Funding and Financing Bill

March 2020

Auckland Council's submission on the Infrastructure Funding and Financing Bill

1. Auckland Council welcomes the opportunity to make a submission on the Infrastructure Funding and Financing Bill.
2. This submission has been approved by the council's Planning Committee. The address for service is Auckland Council, Private
3. Bag 92300, Victoria Street West, Auckland 1142.
4. Please direct any enquiries to Matthew Walker, Group Chief Financial Officer, at matthew.walker@aucklandcouncil.govt.nz and/or on 021-229-4094.

Introduction

1. This submission sets out the council's supports the Infrastructure Funding and Financing Bill. This submission focuses on some administrative and implementation matters which may require clarification or further consideration.
2. The council's response to these matters are set out in this submission, and commentary on specific clauses is outlined in Attachment A: Infrastructure Funding and Financing Bill clauses. The council has also sought the views of its local boards. Feedback was received from three local boards. Their views are included in full in Attachment B: Local board views.

Executive summary

Overall conclusions

3. The council supports the Infrastructure Funding and Financing Bill (IFF) which provides new tools to fund and finance infrastructure. We consider that the legislation will support the provision of infrastructure to accelerate housing and urban development.
4. The Auckland region needs to accelerate investment in infrastructure to address the city's housing issues and to meet the goals of major public and private developers. There have been decades of under-investment in infrastructure in the Auckland region. While the council has committed to a record \$26 billion capital investment programme, further infrastructure investment is required for this land to be developed at the pace required. Although record numbers of new dwellings are being consented in Auckland, our region still faces a significant housing shortfall. Significant investment in infrastructure to support more housing and is needed to keep pace with development and prepare our region for future population growth.
5. Auckland Council has adopted a debt ceiling as a prudent and sustainable approach to borrowing. The council's investment plans over the period of the 10-Year Budget 2018-2028 take us very close to our ceiling. Our lack of debt headroom constrains our ability to provide the infrastructure needed to meet Auckland's growth challenges. Borrowing beyond our debt ceiling – which the council is very close to – would risk a downgrade to the council's credit rating, meaning higher interest costs across all our borrowing over time and would impact on our access to debt markets. Limits on the council's ability to borrow mean that additional investments require new or alternative financing mechanisms allowing third parties to provide the capital for investment in public infrastructure.
6. Auckland Council sees the IFF Bill as a key tool to progress housing and urban development by supporting the acceleration of investment in infrastructure. Applying this tool to developments within the existing growth planning framework will deliver thriving connected communities and avoid negative outcomes such as increased congestion and environmental degradation.
7. The Auckland Unitary Plan (AUP) provides the capacity for over one million dwellings on residential zoned land, and significant additional capacity for dwellings on business zoned land. Over 15,000 hectares of rural land has also been zoned for future urban development in the AUP. The Auckland Plan sets out the timing and location for future urban development based on our plans for infrastructure and achieving the city's goals for a balance between brownfields and greenfields. The council encourages the government to promote the use of this tool to support development in alignment with the council's plans to ensure the best community and urban development outcomes.
8. The council is pleased that it is intended that its endorsement is required for the technical specification of the assets, including the impact on the wider network, and its ability to meet the ongoing operating costs once the assets are vested. However, the council notes the current drafting requires amendment to clarify that these endorsements are compulsory prior to the approval of a levy. The council also agrees with the provisions for it to be compensated for the costs of collecting the levy.
9. The council supports the provision in the bill that safeguard the interests of levy payers including the:
 - cap on the total amount of money to be recovered by the levy

- requirement for the minister in approving the levy to consider factors which are consistent with clause 101(3) of the Local Government Act. These factors include who will benefit from the infrastructure to be funded and the affordability of the levy to those who will pay it
 - appointment of a monitor to oversee the ongoing application of the levy.
10. We consider that the bill as drafted will largely deliver the results the government and council are seeking. Our submission identifies several areas where changes would improve the prospects of these results being achieved. For local and central government to have confidence that the new financing and funding regime will operate smoothly, staff recommend that some technical issues should be addressed. These issues include:
- clarification that land purchase is included in construction costs and identifying how construction cost risks will be managed between lenders, the Crown, the territorial authorities and landowners
 - technical matters regarding implementation of the intent of the endorsements and provision for a dispute resolution process in the event a vesting agreement cannot be agreed
 - technical matters to ensure the alignment of the administration of rates and levies and reconciliation of the overlap of development contributions and levies
 - consider making provision for a broader range of options for setting charges on land to better suit the capital repayment role of the levy and inclusion of the levy in the Rates Rebates Act 1973
 - allowing for the bundling of financing for smaller projects and initiatives (such as connecting households currently on rainwater tanks to the reticulated water supply network).
11. Where the council is the proposer it will be required to undertake appropriate consultation under the Local Government Act. The council encourages the government to promote the value of fostering local elected member leadership and community engagement to support decision making where a third party proposes a levy.

Background

Special purpose vehicles model

12. The council supports the use of the Special Purpose Vehicle (SPV) model to allow capital to be:
- raised for investment in infrastructure beyond the council's capacity
 - provided by third parties
 - repaid by a levy secured over land, like rates.
13. Access to capital to invest in the infrastructure required to support growth is the key challenge facing the council. The SPV model is an effective means to address the constraints on our ability to raise additional capital. The council is pleased that developments supported by an SPV model will be subject to the provisions of the Auckland Plan and the Auckland Unitary Plan and require regulatory approval through the standard resource and building consent processes.
14. The council supports the flexible approach the legislation provides for the establishment of an SPV and the levy. Each SPV will have flexibility to tailor the levy to the individual characteristics of specific development areas.
15. SPVs can finance the infrastructure required to allow development to proceed and the infrastructure required to build communities such as parks and community centres. This is consistent with the wellbeing approach in the Local Government Act (2002) as well as the (reinstated) remit of development contributions.
16. The Independent Māori Statutory Board (IMSB) is pleased that the minister can only consider the inclusion of protected Māori land within the levy area if the owners have given their consent. The IMSB suggests that there be alignment of the treatment of rating units used by the territorial authority and the levy setting by an SPV. They also recommend that the apportionment of protected Māori land should be treated similarly for both rates and an SPV levy.

17. The council has reviewed the funding arrangements proposed in this bill alongside those in the complementary Urban Development (UD) Bill, on which we made a submission on 14 February 2020. That submission included support for the funding and financing provisions that are similar to the provisions in the IFF Bill.
18. In the short term, it is very likely the focus of IFF proposals will be in greenfield areas where growth planning and consenting issues are already well progressed. The bill may have enough flexibility to enable it to apply to brownfields in the future. Establishing a levy scheme will improve transparency around the costs of growth-related infrastructure in brownfields. In these areas, a levy proposal could provide capital to address infrastructure capacity constraints for the greater development area. This could encourage further redevelopment in the surrounding area where costs for infrastructure could be shared.

Commentary

Infrastructure (definitions, risks and vesting)

Eligible costs

19. It would be helpful to be explicit that land acquisition costs are eligible costs. Land acquisitions are a major element of the cost of infrastructure, e.g. roads and stormwater management, but aren't specifically included in the definition of construction costs. Our estimates indicate that land acquisitions make up approximately 40 per cent of infrastructure costs. It would be valuable to clarify that these are included as many projects would be unable to proceed without a way to finance and fund the land acquisition costs.

Eligible infrastructure

20. The bill refers to the Local Government Act 2002 (LGA) to define eligible community facilities and community infrastructure. While this will include the acquisition of open space land administered under the LGA, the acquisition of reserves under the Reserves Act 1977 should also be included in the bill.
21. Consideration should also be given to including waste and resource recovery infrastructure such as community recycling centres within the definition of eligible infrastructure. Community recycling centres that operate as hubs across Auckland, as adopted in the Auckland Waste Minimisation Plan 2018, are an example of waste infrastructure. These kinds of hubs will be increasingly important to achieve the changes recently signalled by proposed amendments to the Waste Minimisation Act (increased waste levy and priority product designation), and to contribute to reaching the emissions reductions targets of the Zero Carbon Act 2019.
22. The council welcomes the inclusion of environmental resilience infrastructure in the bill as it recognises that natural environments can play a role as infrastructure needed to service development. The council's Auckland's Climate Action Framework and the environmental outcomes in the Auckland Plan 2050 outlines the use of environmental infrastructure to manage natural hazard risk.
23. The council suggests that the definition of environmental resilience infrastructure in the bill is broadened to include protection, restoration and enhancement. This will enable infrastructure that provides environmental improvements rather than only avoiding harm.

Risk

24. All infrastructure projects, and their associated funding, involve a certain measure of risk. The bill prohibits the provision of any guarantee or financial support of the SPV by the responsible levy authority (the council) but allows this to be provided by the Crown. Further documentation associated with this bill, such as cabinet papers and minutes, and information sheets published by the government is clear that residual risks associated with infrastructure projects funded by the levy sit with the Crown via a Government Support Package that will be provided on a case-by-case basis. They recognise without it the model would not work. The draft submission suggests that for clarity the legislation could make some reference to the role of the Government Support Package without committing the Crown to underwriting all SPV risks in every case.

25. The bill limits the ability of creditors to make claims on assets once assets have vested. The council considers that this protection should be extended to also cover the period when assets are under construction.

Vesting

26. The bill does not provide for a dispute resolution process should the SPV and the council be unable to agree on the terms of the vesting agreement. We note that the monitor may step in where an SPV and the territorial authority cannot agree on all the necessary terms of the levy administration agreement and recommend that this also be provided for in the vesting agreement. In addition, we suggest that the bill clearly states that vesting should be at no cost to the responsible infrastructure authority.

Technical billing issues

27. Collection of rates is essential to our ability to deliver services to Aucklanders. For the 2020/2021 year, we plan to collect rates of \$1.9 billion which will make up 45% of our revenue. We set and collect the rates for 570,000 properties each year and invoice owners quarterly. To ensure this process runs smoothly and accurately we undertake several end-to-end production tests beginning in February each year. Rates assessments and the first instalment invoices are generated early July for delivery in early August.
28. The council has successfully added the charges for liable properties in the Milldale development to rates invoices with a manual process. These charges are set once for each property and change by a fixed amount annually.
29. If the IFF model is as successful as we hope, the number of properties involved will be much greater than Milldale. Additionally, each year there is the potential for levy changes. Supporting the inclusion of IFF levies on rates invoices will likely involve significant process changes within our billing team and likely system changes.
30. There are several legal, administrative and policy parameter considerations in the production of rates assessments and invoices each year. It is not possible at this time to determine exactly how the addition of a levy which is reset annually will work in practice. It is possible that unforeseen issues may arise with implementation of levy collection that weren't contemplated when the bill was drafted. It would be desirable for there to be limited provision in the legislation for waivers from relevant legislation to be granted by Order in Council. The waiver should be available for transitional period of five years as it may take some time for the first levy to be set. The Local Government (Auckland Council) Act 2009 made provision for the use of Orders in Council in such circumstances. The reason this provision was included was to allow issues to be addressed quickly which may not otherwise be possible given the other demands on the legislative timetable. This mechanism was used to adjust the rates transition mechanism so that it would function as intended.
31. The bill is not clear on the order of payment and that general rates will take priority over an SPV levy, if rates notices are not paid in full. This could be included in the levy agreement, but we suggest that this should be made explicit in the legislation. Other recommendations for changes to the rates provisions are identified in Attachment A: Infrastructure Funding and Finance Bill clauses.

Refinements to rating legislation

32. The rating mechanisms in the Local Government (Rating) Act 2002 provide a fit for purpose funding tool for council operating costs. The funding tools in the IFF Bill (and UD Bill) are primarily designed to repay capital investments. Once the assets transfer to council ownership the ongoing operating and eventual replacement costs will transfer to council and be funded from general rates.
33. Auckland Council currently uses targeted rates to fund repayment of one-off capital investment in identified geographical areas. The benefits of these investments, and the ratepayers who benefit from them, are well defined. For our business improvement districts and the City Centre Targeted Rate there are established governance arrangements that provide ratepayer representation on the investment programmes. Benefits

will not be so well defined for some of the investments envisioned under the UD and IFF Bills. Additionally, some landowners are likely to be unwilling participants.

34. The key challenge an SPV will face when setting a levy will be to strike a balance between generating a reliable revenue stream to repay capital costs and setting a politically acceptable stream of compulsory charges on land.
35. The council suggests that the SPV levy should be included in the scope of the Rates Rebate Scheme. The purpose of the Rates Rebate Scheme is to provide additional financial assistance to ratepayers on lower incomes. The application of an SPV levy will increase the financial burden on these ratepayers. Without adding it to the Rates Rebate Scheme, the impacted ratepayers would be under additional financial burden.
36. Current legislation allows targeted rates that reflect size and development potential (as it relates to zoning) to be set. However, additional rating methods would allow an SPV greater flexibility to better align benefits received from infrastructure investment and to manage the incidence of rates used to recover those costs.
37. Under the UD and IFF bills, targeted rates will be funding infrastructure that supports development of land that has widely varying
 - development potential
 - development cost
 - size.
38. Land title structure and ownership changes over time as it is developed and subdivided. As land is subdivided into smaller blocks as development proceeds, a proportion of the land area ends up as non-rateable roads and parks. The value of these improvements is added to the sub-divided land.
39. In any one defined geographic area the land will have different types of owners (e.g. owner occupiers, landlords, the Crown, land bankers and developers) and they will have widely divergent interests, objectives, levels of equity and cashflows.
40. To help manage the challenges that will be faced by an SPV, the legislation should provide the broadest flexibility to set levies so that the fairest outcomes can be achieved. We suggest that additional mechanisms are required to:
 - allow the charge to be set up front so that levy payers have certainty regarding their liability through time, without the need for annual adjustments
 - provide additional rating methods that reflect feasible development capacity, so that ratepayers aren't charged for benefits which are not financially viable
 - defer the incidence of liability for owner/occupiers to a point when land is developed or changes ownership.

Implementation issues

Endorsement

41. The bill provides that a recommendation must not be made to the minister unless all requested endorsements have been received (clause 25). The council supports the intention of the bill to require the council's endorsement. However, the council notes that this only applies where an endorsement is requested. The bill also does not require the council's response to be affirmative for a proposal to be recommended to the minister. The legislation should require a positive endorsement from the responsible levy authority before a recommendation can be made to the minister.
42. In Auckland transport assets are owned by Auckland Council and managed by Auckland Transport. Under the bill Auckland Council will be the responsible infrastructure authority because the assets will be vested in. The council suggests that the government considers providing for Auckland Transport to be the responsible infrastructure authority.

Protected Maori land

43. The Independent Māori Statutory Board (IMSB) welcomes the requirement that the owners of protected Māori land must give their consent before the minister can consider including the land in the levy area.
44. To avoid inconsistent rating treatment of Māori land between an SPV and the relevant council, the IMSB suggests that the bill should require alignment in the rating treatment of protected Māori land. In Auckland, this would imply that calculation of liability for the levy on protected Māori land should be apportioned between customary or community use and development land in the same way it is apportioned by Auckland Council.

Disclosure

45. It is important that prospective land buyers in an SPV area are aware of a levy so that they are sufficiently informed prior to making a decision to purchase. The bill makes provision for this by requiring the levy information to be published by the monitor and the territorial authority to include it on the Land Information Memorandum.
46. The council notes that further protections for land buyers are present at Crown Infrastructure Partners involvement at Milldale where sellers are required to disclose this information to prospective buyers and information is registered on the land title. The council recommends that consideration of these additional measures be given to strengthen transparency of the SPV levy to prospective land buyers.

Potential application to a broader range of issues

47. The IFF model as proposed in the bill envisages investment in a significant stand-alone project to support development in a defined area. The investment is repaid from levy revenue collected from that area. Establishment costs for this type of scheme means it is not economic to consider stand-alone projects below around \$50 million.
48. Security for the investment is a charge over property and therefore largely uniform in terms of credit quality across different areas. An alternative approach would be to bundle the financing together into a single national-level entity. This would not change how the construction SPV part of the model would work. However, it could make the financing more economically efficient by allowing many smaller projects in different areas to be bundled together.
49. It may be difficult to use the IFF model for brownfield areas, where the desired approach might be to target new developments as they occur without impacting existing residents. A bundled approach to financing may be better able to deal with variation in the timing of levy receipts by spreading this variation out across many projects and areas.
50. In Milldale new property buyers have the option to pay off the infrastructure charge as a lump sum. However, this may not be desirable for all levy proposals as it doesn't provide the predictable stream of cashflows which make these arrangements attractive to financiers. A bundled approach to financing may make lump sum payments more feasible as they would partially offset postponements and payments triggered on development.
51. In addition, Auckland Council presently has a range of voluntary targeted rates, which allow individual ratepayers to spread the cost of connecting to council networks or making energy efficiency upgrades to their homes over time. A current area of focus is the opportunity to provide financial support to ratepayers who want to connect to the reticulated water supply network, as climate change begins to impact households which are currently reliant on rainwater tanks. A national-level financing approach aligned to the IFF model may be an efficient way to support these ratepayers.
52. Auckland Council staff have begun work with staff at other 'high-growth' councils and the Local Government Funding Agency, to investigate these kinds of opportunities and determine how they might complement or build on the IFF model. The council recommends that the government supports further investigation of these opportunities and makes any adjustments necessary to enable the legislation to support a broader range of applications.

53. Cameron Partners, who have been advising the high-growth councils, will make a more detailed submission on these opportunities.

Community engagement and elected member leadership

54. Where the council makes a decision to propose the establishment of a levy, it will be required to consult with affected landowners or take into account their views if already known. However, third parties may also propose a levy and the bill does not provide a statutory requirement for consultation with affected landowners. Instead, these matters appear to be part of the factors that the responsible minister would be required to consider.
55. Territorial authorities are required to consult on all changes to their rating policies. They undertake extensive consultation with ratepayers when changes to rating policy are proposed and in particular, for rates that will apply in defined geographic areas.
56. Local government elected representatives, both councillors and local board members, have close ties to the community and an understanding of local issues and regional growth challenges. The involvement and support of local elected members in decision making processes is likely to facilitate the effective implementation of new funding models. The most recent geographically defined targeted rate adopted by Auckland Council (Rodney Local Board Transport Targeted Rate) was successfully championed by local board members.
57. While flexibility in the approach to consultation and engagement may be desirable, where a third party proposes a levy, the council encourages the government to promote the value of fostering local elected member leadership and community engagement to support effective decision making.

Attachment A: Infrastructure Funding and Finance Bill clauses

Clause	Subject	Comment
7	Responsible infrastructure authority	Should provide for Auckland Transport to be a responsible infrastructure authority
8	Eligible infrastructure	Consideration should also be given to including waste and resource recovery infrastructure such as community recycling centres within the definition of eligible infrastructure. The acquisitions of reserves under the Reserves Act 1977 should also be included in the bill.
8 (3) (b)	Environmental resilience infrastructure.	The current wording in the bill could limit the infrastructure to reversal of damage to already degraded environments, with improvements made to the minimum acceptable condition. We suggest that definition of environmental resilience infrastructure is broadened to include <i>environmental protection, restoration and enhancement</i> . The suggested amendment would more fully recognise opportunities to create and maintain healthy natural environments, and to use growth to deliver environmental improvements rather than just avoiding harm. This reflects the strategic direction of the Auckland Plan 2050 and the wording of the Resource Management Act 1991.
9	Eligible costs	It would be helpful to be explicit that land acquisitions are eligible costs as a key part of infrastructure investment.
18	Content of levy	We suggest that risk management should be included in the levy proposal. We further suggest that the risk owners should also be clearly defined should there be the need to apply the Receivership Act 1993.
20 -21	Endorsements	The legislation should require a positive endorsement from the responsible levy authority before a recommendation can be made to the minister.
26	Recommendation report	For completeness, could provide that the recommendation report includes the asset and levy endorsements.
27(5)	Responsible Minister may recommend levy order	Amend wording to clarify that both of the limits on creditor rights provided in section 138 automatically apply to any levy order unless the Minister makes a recommendation to the contrary. This would effectively reverse the default arrangement provided for in S27(5).
28	Consultation with ministers	This clause does not stipulate what should be consulted on. We suggest that it be reworded to specify the content listed in clause 31.
31	Content of levy order	For completeness, could provide that the levy order includes the asset and levy endorsements outlined in S20 and S21.
32	Leviable land categories	Categories of leviable land used by the SPV should be consistent with the categories and interpretations in use by the levy authority.
41	Rating information	We suggest that the bill should require alignment in the rating treatment of protected Māori land. Further discussion is included in paragraph 44 of the council's submission.
55	Levy administration	Clause 55 states that the levy authority (the council) must take all reasonable steps to administer the levy, which includes the recovery of

Clause	Subject	Comment
57 (2)(a)		unpaid levies. This seems to be in contradiction of section 57 (2) (a) which permits a council to notify an SPV that it will not recover unpaid levies.
74	Penalties for unpaid levy	The legislation should make it clear who retains the penalty revenue.
75	Remission policy	<p>The council and the SPV must agree on the terms of the SPV's Remission Policy. Although the bill does not require consultation on this process, we note that the LGA requires territorial authorities to consult on rates remissions and postponement policies.</p> <p>We recommend that the intent of the remissions policy this is clarified, and, if they are to be mandatory, a mechanism for how the policy is to be finalised if the parties fail to agree is included.</p>
88	Vesting agreement	<p>Provision for relevant infrastructure authority to require that specified conditions for the infrastructure be included in the vesting agreement (clause 20(4)). However, it is not made clear that the SPV must accept those conditions as part of the vesting agreement, particularly if the vesting agreement is not concluded until a later date (than the asset endorsement).</p> <p>Other considerations for vesting are discussed in paragraph 26 of the council's submission.</p>
89	Excess levy	The ability of the responsible levy authority to retain any amount of excess levy that is less than the excess levy threshold may be perceived by the affected beneficiaries or by the public generally as unjust.
91- 94	Development contributions and financial contributions	These sections relate specifically to development contributions and financial contributions, however, the bill does not make provisions for the treatment of targeted rates which may have been collected for infrastructure in the area.
93-94	Return of contributions	These sections do not provide a timeframe within which an SPV should make a direction to return any contributions. This means that a territorial authority cannot determine when refunds or returns should be made to the current ratepayer. The timeframe should be specified in the bill.
98	Notice requirement	This clause provides for a responsible SPV to give notice prior to breaking up any road or public land to the person who has jurisdiction over that land. We propose this be removed as it is already provided for elsewhere. For example, the National Code of Practice for Utility Operators' Access to Transport Corridors provides this for roads.
105	Financial statements	Section 105 requires an SPV to prepare its financial statements within four months of the levy year-end, however, this is inconsistent with the LGA, which requires that financial statements are prepared within three months of year end. We believe there should be consistency.
131	Charge over any asset	Section 131 seems to imply that an SPV can grant a security charge over physical assets. The LGA does not allow local authorities to grant a security charge over physical assets (only revenue), and we believe the IFF Bill should be consistent with this. Further, we note that the term "asset" is not defined in the IFF bill and, in the interest of avoiding confusion, suggest that it is defined.

Clause	Subject	Comment
138	Limit on usual rules for transactions and dispositions at under value	Limits on creditors need to be extended in the case of unfinished assets controlled by an SPV which have not yet been vested in the relevant infrastructure authority.
<i>Other act</i>	Rates Rebate Act 1973	The council suggests that the SPV levy should be included in the scope of the Rates Rebate Scheme.

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